

**STERN
SHAPIRO
WEISSBERG
& GARIN LLP**
attorneys at law

RECEIVED
MAR 31 2014
OFFICE OF THE REGIONAL ADMINISTRATOR

Max D. Stern
Jonathan Shapiro
Lynn G. Weissberg
Patricia Garin
Martin E. Levin
Nora J. Chorover
Jeffrey P. Wiesner
Paul S. Sennott
John Cushman
Harley C. Racer
Rebecca Schapiro

Of Counsel
John Taylor Williams
David L. Kelston

March 26, 2014

BY CERTIFIED MAIL

Douglas B. Cook, President
Cook Forest Products, Inc.
252 Milford Street
Upton, MA 01568
Certified Mail # 7011 1150 0000 0300 4940

Re: 60-Day Notice of Violations and Intent to File Suit Regarding Noncompliance
with Federal Clean Water Act's Industrial Stormwater Discharge Requirements:
252 Milford Street, Upton, MA

Dear Mr. Cook,

This office represents Clean Water Action, a national non-profit citizens' organization working for prevention of pollution in the nation's waters, protection of natural resources, creation of environmentally-safe jobs and businesses, and empowerment of people to make democracy work. Clean Water Action has over one million members nationally, more than 50,000 of whom reside in Massachusetts.

Cook Forest Products, Inc. ("Cook") submitted a Notice of Intent ("NOI") to be covered by EPA's reissued Multi-Sector General Stormwater Permit for Stormwater Discharges Associated with Industrial Activity ("General Permit") on July 12, 2011.¹ The company has violated and continues to violate the permit's terms and conditions.

We write to give notice that Clean Water Action intends to file a civil action in the United States District Court for the District of Massachusetts under section 505 of the Federal

¹ The General Permit was first issued in 1995 and was reissued in 2000 and 2008. 60 Fed. Reg. 50804 (Sept. 29, 1995); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008). The General Permit expired on September 29, 2013, but has been administratively continued by its own terms. See General Permit, pg. 9.

Clean Water Act (the "Act"). The subject of the action will be Cook's unlawful discharge of stormwater from its log storage and handling facility at 252 Milford Street in Upton (the "Facility"). According to Cook's NOI, stormwater runoff from the Facility is discharged into the Town of Upton's municipal storm sewer system and/or into wetlands adjacent to Mill Pond.

Activities that take place at industrial facilities, such as material handling and storage, are often exposed to the weather. As runoff from rain or snowmelt comes into contact with these materials, it picks up pollutants and transports them to nearby rivers, lakes, or coastal waters and tributaries thereto, including but not limited to storm sewer systems, wetlands, and other surface waters. Stormwater pollution is a significant source of water quality problems for the nation's waters.

Clean Water Action will ask the Court to ensure Cook's future compliance with the Act, assess civil penalties in an appropriate amount,² award plaintiff its litigation costs, including attorney and expert fees, and award any other relief the Court deems appropriate. Clean Water Action's complaint will be filed a minimum of 60 days after the postmark date of this letter. This is a formal 60-day notice of intent to sue that is being served pursuant to 40 C.F.R., Part 135.

This notice is being provided by:

Cindy Luppi, New England Regional Co-Director
Clean Water Action
262 Washington Street, Suite 301
Boston, MA 02108
(617) 338-8131
(617) 335-6449 (fax)

Counsel for Clean Water Action in this case are:

Nora J. Chorover
Stern, Shapiro, Weissberg & Garin, LLP
90 Canal Street, Suite 500
Boston, MA 02114
(617) 742-5800
(617) 742-5858 (fax)

² The Act authorizes the Court to assess a penalty of up to \$37,500 a day for each violation. *See* 73 Fed. Reg. 75340 (Dec. 11, 2008).

COOK'S VIOLATIONS AND DATES OF VIOLATIONS

Cook's violations are described below and are also set forth on a Table attached as Exhibit A hereto.³ The Complaint, when filed, will set forth additional days of violations that occur between the date of this letter and the date on which the Complaint is filed.

A. VIOLATIONS OF THE TERMS OF THE GENERAL PERMIT

The company has violated the permit's terms, as follows:

1. Failure to Comply with the Permit's Monitoring Requirements

Cook is required to monitor its discharges in accordance with the specific provisions of section 6 of the General Permit (pgs. 33-40) and Appendix B, section B. This includes monitoring for benchmark parameters applicable to log storage and handling facilities. General Permit, section 8.A.6. Cook was required to monitor for the presence of pollutants in its stormwater discharges for each quarter commencing with the October 1, 2011 to December 31, 2011 quarter. Quarterly monitoring is required to continue until four consecutive quarterly samples show that the company's discharges are below EPA benchmark levels.⁴ Cook failed to comply with these benchmark monitoring requirements.

The Stormwater Permit requires facilities to conduct routine facility inspections, quarterly visual assessments, and annual comprehensive site inspections.⁵ Comprehensive site inspections must be completed by no later than September 29th of each year of permit coverage. Cook has failed to complete any annual inspections, as set forth on Exhibit A.

To the extent additional monitoring violations become known to Clean Water Action before the action is filed, the complaint will seek remedy for such additional monitoring violations. To

³ Clean Water Action believes that violations have occurred on the dates identified in this letter and on Exhibit A, and not just on rain days. However, to the extent it is determined that rain days are relevant in determining the dates of violations, such rain dates through February 17, 2014 are set forth on Exhibit B hereto. The complaint, when filed, will set forth additional rain dates since that date.

⁴ Specifically, Cook was required to monitor for Total Suspended Solids. See General Permit, section 8.A.6, Table 8.A-1.

⁵ Stormwater Permit, pgs. 20-25.

the extent additional monitoring violations are learned through discovery in the action, the complaint will be amended to seek remedy for such additional monitoring violations.⁶

2. Failure to Comply with the Permit's Reporting Requirements.

Cook is required to report certain information to EPA and the Massachusetts Department of Environmental Protection ("Mass DEP") regarding its stormwater discharges in accordance with the provisions of section 7 of the Permit. Among other things, Cook must submit quarterly benchmark monitoring data to EPA. See General Permit, section 7.1.⁷ Benchmark pollutant monitoring reports were to have been filed with EPA 30 days following receipt of monitoring results. Cook failed to comply with these reporting requirements, as set forth on Exhibit A.

Cook is also required to prepare and submit to EPA annual reports that include findings from its annual comprehensive site inspections and documentation of corrective actions. See General Permit, section 7.2. Cook failed to comply with this requirement, as set forth on Exhibit A.

To the extent additional reporting violations become known to Clean Water Action before the action is filed, the complaint will seek remedy for such additional reporting violations. To the extent additional reporting violations are learned through discovery in the action, the complaint will be amended to seek remedy for such additional reporting violations.⁸

⁶ Additional discovered monitoring violations may include, without limitation: failure to ensure representative sampling (General Permit, App. B, section B(1)(A), pg. B-5); failure to monitor from all facility outfalls (id., section 6.1.1, pg. 33); failure to monitor during a measurable storm event following the preceding storm by at least 3 days (id., section 6.1.3, pg. 33); failure to conduct monitoring in accordance with test procedures approved under 40 CFR Part 136 (id., App. B, section B(10), pg. B-6); failure to sample within the first 30 minutes of a measurable storm event (id., section 6.1.4, pg. 34), or failure to monitor for compliance with effluent limitations for discharges from spray down or intentional wetting of logs at wet deck storage areas (id., section 8.A.7, pg. 49).

⁷ If the data contains any exceedences of benchmarks, it must also be submitted to Mass DEP. See General Permit, Section 9.1.2.4.

⁸ Additional discovered reporting violations may include, without limitation, failure to submit effluent limit monitoring data for discharges resulting from spray down or intentional wetting of logs at wet deck storage areas. failure to submit all reporting data to EPA no later than 30 days after receipt of laboratory results (General Permit, section 7.1).

3. Failure to Ensure That Control Measures Minimize Pollutant Discharges

The General Permit requires Cook to ensure that its control measures minimize its stormwater pollutant discharges. General Permit, section 2.0 (pg. 12).⁹ The company must modify its control measures as expeditiously as practicable whenever it finds that they “are not achieving their intended effect of minimizing pollutant discharges.” Id., section 2.1. Because the company has not been regularly monitoring its pollutant discharges as required by the permit, it cannot know how its existing control measures are performing and therefore cannot have been modifying them as necessary to minimize stormwater pollutant discharges.

This Notice Letter alleges that Cook failed to implement adequate control measures based on information presently available to Clean Water Action. If additional information regarding this violation becomes known to Clean Water Action in the future, the complaint may set forth some or all of such additional information.

CONCLUSION

Clean Water Action believes this Notice of Violations and Intent to File Suit sufficiently states the basis for a civil action. During the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of litigation. If you wish to pursue such discussions, please have your attorney contact us within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Nora J. Chorover

Attorney for
CLEAN WATER ACTION

⁹ “Minimize” means “reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.” Id.

Cook Forest Products, Inc.

3/26/2014

Page 6

cc: (by certified mail)

Curt Spalding, Regional Administrator
EPA New England, Region 1,
5 Post Office Square, Ste. 100
Boston MA 02109
Certified Mail # 7011 1150 0000 0300 4957

Gina McCarthy, Administrator
US EPA Headquarters
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, DC 20460
Certified Mail # 7011 1150 0000 0300 4964

Eric Holder, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001
Certified Mail # 7011 1150 0000 0300 4971

David W. Cash, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108
Certified Mail # 7011 1150 0000 0300 4117

Douglas B. Cook, Registered Agent
75 Winter Street
Hopkinton, MA 01748
Certified Mail # 7011 1150 0000 0300 4865

EXHIBIT A

EXHIBIT A
COOK FOREST PRODUCTS, INC. PERMIT VIOLATIONS

Quarter	Type of Violation	Parameter	Beginning Date of Violation	Earliest End Date of Violation
1	Failure to Monitor Benchmark	Total Suspended Solids	December 31, 2011	The present
1	Failure to Report Benchmark	Total Suspended Solids	January 30, 2012	The present
2	Failure to Monitor Benchmark	Total Suspended Solids	March 31, 2012	The present
2	Failure to Report Benchmark	Total Suspended Solids	April 30, 2012	The present
2	Failure to Monitor Benchmark	Total Suspended Solids	March 31, 2012	The present
3	Failure to Monitor Benchmark	Total Suspended Solids	June 30, 2012	The present
3	Failure to Report Benchmark	Total Suspended Solids	July 30, 2012	The present
4	Failure to Monitor Benchmark	Total Suspended Solids	September 30, 2012	The present
4	Failure to Report Benchmark	Total Suspended Solids	October 30, 2012	The present
5	Failure to Monitor Benchmark	Total Suspended Solids	December 31, 2012	The present
5	Failure to Report Benchmark	Total Suspended Solids	January 30, 2013	The present
6	Failure to Monitor Benchmark	Total Suspended Solids	March 31, 2013	The present
6	Failure to Report Benchmark	Total Suspended Solids	April 30, 2013	The present
7	Failure to Monitor Benchmark	Total Suspended Solids	June 30, 2013	The present
7	Failure to Report Benchmark	Total Suspended Solids	July 30, 2013	The present
8	Failure to Monitor Benchmark	Total Suspended Solids	September 30, 2013	The present
8	Failure to Report Benchmark	Total Suspended Solids	October 30, 2013	The present
9	Failure to Monitor Benchmark	Total Suspended Solids	September 30, 2013	The present
9	Failure to Report Benchmark	Total Suspended Solids	October 30, 2013	The present
Permit Year 1	Failure to Conduct and Document Required Inspections		September 29, 2011	The present
Permit Year 1	Failure to Submit Annual Report		November 13, 2011	The present
Permit Year 2	Failure to Conduct and Document Required Inspections		September 29, 2012	The present
Permit Year 2	Failure to Submit Annual Report		November 13, 2012	The present

Quarter	Type of Violation	Parameter	Beginning Date of Violation	Earliest End Date of Violation
Permit Year 3	Failure to Conduct and Document Required Inspections		September 29, 2013	The present
Permit Year 3	Failure to Submit Annual Report		November 13, 2013	The present
All	Failure to Ensure That Control Measures Minimize Pollutant Discharges		December 31, 2011	The present

EXHIBIT B

EXHIBIT B

DAYS BETWEEN
SEPTEMBER 29, 2011 AND MARCH 17, 2014
ON WHICH STORMWATER FROM FACILITY
DISCHARGED TO WATERS OF THE UNITED STATES

September 2011:	29, 30
October 2011:	4, 13, 14, 15, 20, 27, 28, 30
November 2011:	11, 17, 23, 24, 30
December 2011:	7, 8, 22, 23, 28
January 2012:	12, 13, 17, 20, 22, 24, 27, 28
February 2012:	25
March 2012:	1, 3
April 2012:	1, 2, 23, 24
May 2012:	2, 9, 10, 16, 22, 23, 30
June 2012:	2, 3, 5, 7, 8, 13, 14, 23, 26
July 2012:	2, 4, 19, 24, 29
August 2012:	6, 11, 16, 18, 19, 28, 29
September 2012:	3, 7, 9, 19, 23, 24, 28, 29
October 2012:	1, 3, 8, 11, 16, 20, 29, 30, 31
November 2012:	8, 14, 28
December 2012:	8, 10, 17, 18, 19, 21, 22, 27, 28, 30
January 2013:	12, 17, 29, 31
February 2013:	9, 12, 17, 20, 24, 25, 27, 28
March 2013:	7, 8, 9, 13, 19, 20
April 2013:	10, 12, 13, 20
May 2013:	10, 20, 22, 24, 25, 26, 29, 30
June 2013:	3, 4, 7, 8, 11, 12, 14, 15, 18, 19, 28
July 2013:	12, 23, 24, 26, 27, 30
August 2013:	2, 8, 10, 27
September 2013:	2, 13, 14, 22
October 2013:	5, 7, 8
November 2013:	1, 8, 18, 23, 27, 28
December 2013:	2, 7, 10, 11, 15, 18, 24, 30
January 2014:	3, 6, 7, 12, 15, 19, 22
February 2014:	4, 5, 6, 14, 16, 19, 20, 21, 22
March 2014:	13